

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  LTDS CORPORATION	DOCKET NO. TCU-01-13 (FCU-00-4)
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**ORDER DENYING MOTION TO DISMISS  
AND TAKING OFFICIAL NOTICE**

(Issued August 28, 2001)

On June 19, 2001, LTDS Corporation (LTDS) filed a motion to dismiss the certificate revocation proceeding identified as Docket No. TCU-01-13. In support of its motion LTDS asserts:

- The Utilities Board's (Board) order issued December 22, 2000, in Docket No. FCU-00-4, which is a predicate for this certificate revocation proceeding, failed to provide notice of specific alleged inadequacies and did not allow LTDS a reasonable time to cure.
- The investigative findings of the Board's staff do not satisfy the grounds to trigger this revocation proceeding established in the December 22, 2000, order. The listed grounds for revocation are: (i) LISCO continues to be the only LTDS customer; (ii) LTDS fails to aggressively market competitive services throughout its service territory; and (iii) LTDS fails to win customers.

- LTDS has had no opportunity to cure the specific inadequacies listed in the show-cause order including: (i) Absence of voice traffic other than in the Fairfield exchange; (ii) failure to use Qwest Corporation operator service in the Fort Madison exchange; (iii) voice trunks "allegedly" cancelled in three exchanges; (iv) trunks ordered in two exchanges where LTDS has no NXX codes; (v) the Board is "unaware" of marketing or advertising efforts for voice customers; (vi) residential rate deleted from tariff in January 2001; and (vii) LISCO advertising and accepting pre-orders for digital subscriber line (DSL) service in four exchanges.
- The proceeding violates 199 IAC 22.20(5)"b" because the December 22, 2000, order contains no allegations of service inadequacies for LTDS to admit or deny.
- The proceeding violates the notice-and-cure provisions of Iowa Code § 476.29(9), as well as constitutional rights by depriving LTDS of its property interest in its certificate without due process and by denying LTDS equal protection under the law.
- Because of the show-cause order, the North American Numbering Plan Administrator (NANPA) has suspended certain NPA-NXX codes, making it more difficult for LTDS to act as a bona fide competitive local exchange carrier (CLEC).

On August 22, 2001, LTDS filed a "Renewal of its Motion to Dismiss." In addition to renewing its procedural claims, LTDS also argues that the pre-filed testimony in the case shows LTDS is offering, promoting, and providing voice service in competition with other local exchange carriers.

The Board will deny the motion to dismiss for the following reasons. The order of December 22, 2000, is clear as to what LTDS was required to do in order to continue to be a CLEC. The order provided in pertinent part:

It is questionable that LTDS can, over time, be viewed as a CLEC if it continues to have only LISCO for a customer. The interconnection required under the federal act is intended to promote local exchange competition and is for the direct benefit of CLECs, not ISPs. LTDS must show by its future actions that it is a bona fide CLEC by aggressively marketing competitively priced services throughout its service territory. It must win customers if it is to continue to receive the benefits, such as those ordered today, which are accorded a CLEC. If LTDS fails to do this, the Board will entertain a complaint pursuant to Iowa Code §§ 476.29(5) and (9) aimed at revoking the CLEC certificate granted by the Board to LTDS.

LTDS had no difficulty in listing the requirements established by that order in the first sentence of paragraph 4 of its motion to dismiss. It is incongruous for LTDS to claim repeatedly in its motion to dismiss that it was not notified of the specific inadequacies in its services and facilities.

The specific items listed in the show-cause order are not Board findings. They are the preliminary results of an informal staff investigation that gives rise to this contested case proceeding. The findings in this case will be based wholly on the evidentiary record made in this case, not on the results of the investigation. LTDS's

factual challenge to the results of the preliminary investigation conducted prior to docketing this case and its claims regarding the pre-filed testimony do not provide adequate support for a motion to dismiss. Instead, its pleadings merely discuss evidentiary issues to be ruled on when the record and briefing in the case are completed.

LTDS claims the December 22, 2000, order in Docket No. FCU-00-4 did not contain allegations of inadequacies it could admit or deny as required by 199 IAC 22.20(5)"b." The order clearly states that LTDS must have more customers than LISCO to be a CLEC. It further states LTDS must aggressively market its services throughout its service territory and win customers to avoid possible revocation proceedings under Iowa Code § 476.29(9). The choice of LTDS to remain silent, neither admitting nor denying the identified deficiencies, does not support a motion to dismiss. The issues in this case will turn on whether LTDS has cured those deficiencies in the months following the notice.

Because the notice of inadequacies was clear and LTDS was not prevented from responding, the due process argument made by LTDS is without merit. Similarly, the equal protection argument provides no evidence of unwarranted disparate treatment of LTDS. This case involves matters of first impression raised under federal and state law. Policy set in this case is likely to influence future contested case and rule making decisions. There is no equal protection violation in this proceeding.

As stated in this order, revocation of a certificate under Iowa Code § 476.29(9) is a two-step process. The factual antecedents for this proceeding begin in Docket No. FCU-00-4. The Board will take official notice of the record in that docket.

**IT IS THEREFORE ORDERED:**

1. The motion to dismiss filed on June 19, 2001, and the renewal of the motion to dismiss filed on August 22, 2001, by LTDS Corporation in Docket No. TCU-01-13 is denied.
2. The Board takes official notice in this docket of the record in Docket No. FCU-00-4.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 28<sup>th</sup> day of August, 2001.